

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-167299-D1 AND ALL
OTHER SEAMAN DOCUMENTS

Issued to: Carlos M. Banks

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1514

Carlos M. Banks

This appeal has been taken in accordance with Title 46 United States Code 239b and Title 46 Code of Federal Regulations 137.30-1.

By order dated 4 March 1965, an Examiner of the United States Coast Guard at New York, New York revoked Appellant's seaman documents upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The specification found proved alleges that on 20 May 1955, Appellant was convicted by the Court of General Sessions of the County of New York, a court of record, for unlawful possession of marijuana.

At the hearing which began on 30 December 1964, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced documentary evidence of Appellant's conviction as alleged. The evidence indicates that Appellant was caught with approximately two pounds of marijuana and said he was delivering it for a friend. The sentence of Appellant by the court was, "Sentence suspended, no probation."

Appellant testified that he has never used or sold narcotics; he has never been arrested or charged to appear at a Coast Guard hearing on any other occasion; he has been sailing since 1939; and he voluntarily registered with Customs in 1958 as a narcotics violator. Corroborating evidence and 71 discharges from vessels since his conviction were also submitted.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order revoking all documents issued to Appellant. His request for a temporary document was denied by the Examiner after Appellant surrendered his document on 22 March 1965.

On appeal, it is urged that, since Appellant has led an exemplary life for the past 10 years, it is unreasonable to revoke his document now. It is also contended that the government is guilty of laches for taking action at such a late date because Appellant's conviction is a matter of public record, his registration with Customs has been available since 1958, and

Appellant has made at least 71 years out of New York without any action having been taken by the Coast Guard to stop Appellant from using his merchant seaman document.

With the appeal, there were filed six letters attesting to Appellant's good reputation for integrity, dedication to his family and religion, respectability as a citizen, reliability, morality and trustworthiness.

In conclusion, counsel requests that the order of revocation be modified.

APPEARANCE: Emanuel Friedman, Esquire of New York City, of Counsel

OPINION

On the bases of the regulations and prior decisions of the Commandant, the Examiner concluded that he was required to enter an order of revocation after proof of a narcotics conviction, by a court of record, for other than use or addiction. Although the action taken by the Examiner was proper, it is my opinion that, in view of the length of time since Appellant's conviction and the strong evidence of rehabilitation during the interim, the order of revocation should be set aside.

The evidence in the record does not indicate that Appellant has ever been associated with narcotics in any manner except on one occasion more than ten years ago. Apparently, the court felt that it was appropriate not to fine or imprison Appellant in 1955. His discharges from voyages since then are evidence that he has sailed regularly (about 50 per cent of the total time). There has been no cause to institute disciplinary action as a result of his conduct while on these numerous voyages. Other evidence at the hearing supports Appellant's testimony that he has an otherwise clear record and that he voluntarily registered as a narcotics violator with the Customs in New York City in March, 1958. Appellant's generally good reputation is established by the testimony of a witness at the hearing and the letters with his appeal. Unfortunately, there is no specific evidence pertaining to his family life or statements by any of his superior officers on the ships he has been serving on since the conviction.

After weighing the favorable evidence against the absence of anything of a derogatory nature other than the ten-year old conviction, and considering the fact that Appellant's registration certificate has been available for inspection since 1958 in U.S. Customs Office, I think it is not only fair to Appellant but also consistent with the interests of safety at sea to return Appellant's document to him.

CONCLUSION

The findings and conclusion of the Examiner that the charge and specification have been proved are affirmed.

ORDER

The order of the Examiner dated at New York, New York, on 4 March 1965, is VACATED.

W. D. Shields
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D.C., this 29th day of July 1965.

Index

Laches

consideration given to claim of
Customs registration, claim based on
narcotics conviction

Narcotics Statute

conviction affirmed, order vacated
Customs registration, laches claimed
Order vacated, conviction affirmed
registration with Customs
rehabilitation claim upheld
revocation vacated, conviction affirmed

Order of Examiner

vacated